



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING DISTRICT OFFICE



KEITH CREAGH
DIRECTOR

March 21, 2016

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. John Wagner
Director of Health, Safety, & Environmental Affairs
Diamond Chrome Plating
604 South Michigan Avenue
P.O. Box 557
Howell, Michigan 48844

Dear Mr. Wagner:

SUBJECT: Violation Notice (VN), Chemical Compatibility Study (CCS) Denial, and Information Request; Diamond Chrome Plating (DCP); Hazardous Waste, Site ID # MID 005 344 973; National Pollutant Discharge Elimination System (NPDES), Permit No MI0058204 (Permit); First Amended Consent Decree (FACD), Ingham County Circuit Court Docket No. 03-1862-CE;

On September 9, 2015, November 2, 2015, and March 16, 2016; the Department of Environmental Quality (DEQ) conducted inspections and compliance reviews of DCP, located at 604 South Michigan Avenue, Howell, Michigan, to evaluate compliance with Part 31, Water Resources Protection; Part 55, Air Pollution Control; Part 111, Hazardous Waste Management; Part 121, Liquid Industrial Wastes of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA); the corresponding requirements under the federal Clean Air Act and Subtitle C of the federal Resource Conservation and Recovery Act of 1976, as amended (RCRA); any administrative rules or regulations promulgated pursuant to these acts; and the 2015 FACD.

As a result of these reviews and inspections, the DEQ, Air Quality Division (AQD), Remediation and Redevelopment Division (RRD), and Water Resources Division (WRD), and the Office of Waste Management and Radiological Protection (OWMRP) staff determined the following violations, at the above referenced location:

1. DEMOLITION EXPOSING HAZARDOUS WASTE CONSTITUENTS WITHOUT SEVEN DAYS NOTICE – The FACD requires seven days notification before exposing hazardous waste constituents. Section 5.2(g) states in part:

“On and after the Effective Date, Defendant shall provide at least seven (7) days’ notice to the OWMRP and RRD Project Coordinators prior to conducting any scheduled work that might expose areas where releases of hazardous waste or hazardous waste constituents may have occurred or where hazardous waste might be accumulated or generated...”

DCP provided written notice on September 1, 2015, which indicated that the demolition would occur on September 9, 2015, and the DEQ OWMRP verified that they would attend. On September 8, 2015, at 10:41am, DCP indicated that demolition of concrete floor inside the building is beginning now, without providing notice of the change of dates. The DEQ immediately issued a verbal and written notification to DCP that demolition today would violate the FACD, due to failure to provide seven day notice, under Section 5.2(g) of the FACD. The DEQ recommended ceasing demolition immediately. Shortly thereafter, on September 8, 2015, at 11:45 am, Ms. Wendi Willis, on behalf of DCP, indicated that DCP "has stopped the job and all concrete cutting/removal will stop until the scheduled time tomorrow."

On September 9, 2015, at 8:00 am, DEQ staff observed that the majority of the concrete debris, including contaminated concrete, had been collected and was hauled away prior to DEQ arrival. DEQ staff requested to inspect the contaminated debris, and DCP indicated that was not possible. Both the DEQ and DCP called the demolition contractor and attempted to locate the waste, but could not find it, during the September 9, 2015, inspection. Therefore, DCP failed to provide access or the ability to inspect the demolition debris that was removed. Failure to provide seven day notice and failure to provide the ability to inspect the contaminated debris both violate Section 5.2(g) of the FACD, and is subject to stipulated penalties, under Section 16.2.

2. HEXAVALENT CHROMIUM DISCHARGE LIMITS – Paragraph 5.4(a) of the FACD requires compliance with the NPDES Permit. DCP is in violation of Part I.A.1. of the NPDES Permit and Section 5.4(a) of the FACD as detailed below in Table 1.

Table 1: Effluent Limit Exceedances, Monitoring Point 001A (Manhole 1379)

Parameter	Date	Maximum Daily Result, ug/l	Maximum Daily Permit Limit, ug/l	Monthly Average Result, ug/l	Monthly Average Permit Limit, ug/l
Hexavalent Chromium	12/10/15	130	32		
Hexavalent Chromium	1/14/16	120	32		
Hexavalent Chromium	December			26	11
Hexavalent Chromium	January			16	11

The violations of the NPDES Permit limits are subject to stipulated penalties under Section 16.2, of the FACD.

3. Storm Water Pollution Prevention Plan (SWPPP) IMPLEMENTATION – Paragraph 5.4(a) of the FACD requires compliance with the NPDES Permit. The NPDES Permit requires the permittee to implement the approved SWPPP, submitted to the DEQ WRD on August 23, 2013. This SWPPP requires cleaning of the ductwork the same day as discovery and maintenance of active leaks until the repair is complete per Table 3 of the

SWPPP. The SWPPP requires documentation of the time and date of cleaning per the Attachment, "Daily Roof Inspection Form."

The October 28, 2015, report submitted by DCP provided notations of the discovery of leaks or weeps from the piping, but did not provide the dates when cleaning was completed, including the following dates:

- a. June 29, 2015;
- b. July 13, 2015;
- c. August 12, 2015;
- d. August 18, 2015;
- e. September 14, 2015;
- f. September 15, 2015.

The DEQ sent a written notice to DCP on December 14, 2015, about the requirements, and DCP provided a written response on January 19, 2016. Failure to document the clean-up dates, after the FACD's effective date (July 28, 2015) are subject to stipulated penalties under Section 16.2.

4. FAILURE TO NOTIFY DEQ OF SAMPLING ACTIVITIES – Section 9.2 of the FACD states:

"With the exception of any sampling conducted in accordance with the Defendant's permits, Defendant, or its consultants or subcontractors, shall provide the MDEQ seven (7) days' notice prior to any sampling activity to be performed pursuant to Section VI (Performance of Response Activities) of this Decree to allow the applicable MDEQ Project Coordinator, or his or her authorized representative, the opportunity to take split or duplicate samples or to observe the sampling procedures..."

DCP's February 1, 2016, Progress Report indicates that DCP staff conducted pumping & sampling of groundwater on two occasions, November 2, 2015, and November 5, 2015, from Monitoring Well MW-604-14, located at 721 South Michigan Avenue. Chain of Custody documents and analytical reports contained in the Progress Report indicate that groundwater sampling occurred before and after the pumping that took place on these dates. Previous reports also indicate that chromium waste water would be generated from pumping this well, and notification should have also been provided under Section 5.2(g) of the FACD.

DCP and/or its consultants or subcontractors, did not notify the DEQ, either verbally or in writing, at any time prior to conducting this sampling, effectively eliminating the opportunity for the applicable DEQ RRD Project Coordinator, Ms. Rebecca Taylor, to collect split or duplicate samples. This failure to notify is a violation of Section 5.2(g) and Section 9.2 of the FACD and subject to stipulated penalties pursuant to Section 16.2.

5. CCS DISAPPROVAL – On November 25, 2015, DEQ OWMRP staff received a copy of the CCS, as required by the FACD, Section 5.2(e). OWMRP staff completed a review of the study on March 16, 2016, and determined that it is deficient. Specifically, the following deficiencies were documented:

- i. DCP provided documentation from the sales company, but no scientific, third party information was provided to document the chemical compatibility of PVC liners. The OWMRP conducted an on-line Google search, which provided information indicating that PVC is not chemically compatible with concentrated chromic acid (attached for your convenience).
- ii. DCP indicated on Pages 1-7 of the CCS that various liners are used, including primarily PVC, but insufficient information was provided to indicate the type of chemicals and the concentration of those chemicals collected in each of the pits and/or tanks listed. Specifically:
 - a. DCP repeatedly listed "dilute chromic acid" without an explanation of what that means.
 - b. DCP also repeatedly listed "a concentration of chromic acid (that) is approximately 4% liquid" without explaining what the variation of the waste is and how that was determined.

DCP uses pits to collect and sometimes store concentrated waste drippings of chromic acid and other chemicals. Specifically, please provide the highest concentrations of these chemicals collected for each pit. That may be estimated using the highest concentration of the chemicals used in the process, and the methods of dilution or concentration expected.

- iii. DCP removed PVC liners of the concrete pits in the past, and the DEQ documented failure of those liners. Please explain how the liners failed, and how the PVC liners are sufficient to now contain chromic acid & all of the other waste chemicals in each pit.
- iv. Given the various chemical concentrations, what does the vendor recommend for replacement periods, and how does this compare with your research? Please describe how DCP will replace them as recommended, and how DCP will monitor the structural integrity and any unexpected degradation of the liners.
- v. Are the liners in the pits used as a secondary containment or primary containment for waste?

In accordance with Section 14.2 of the FACD, the CCS is disapproved. DCP must provide an approvable revised CCS that addresses the above issues, for review, to the OWMRP Project Coordinator, Mr. Bryan Grochowski.

As a result of the hazardous waste inspections conducted on September 9, 2015, and November 2, 2015, the DEQ is hereby issuing a formal Request for Information. Specifically this is your opportunity to provide clarifying information to Mr. Grochowski to document how DCP complied with Part 111 and RCRA:

- A. CONCRETE SAMPLING METHODS – On September 9, 2015, DEQ staff observed that part of the excavation area was visibly contaminated (yellow, green, and brown stains) with hazardous waste constituents (chrome, etc.), and that part of the excavated area appeared to be non-contaminated. DCP indicated that samples from the clean area were mixed with the contaminated area to make a composite, representative sample. This is DCP's opportunity to provide a description and explanation for the sampling and characterization of the waste to show that it was representative. The DEQ hereby requests the following:

"Part 111, Rule 307(2), A generator who is requested by the director to submit evaluation results shall provide the required information within 30 days after receipt of the request. The records shall include all of the following information:

- a. The type of waste and the source or process from which it was produced.
- b. The chemical composition of the waste and the anticipated fluctuations in its chemical composition.
- c. If tests were conducted in the evaluation, all of the following information shall be included:
 - i. The sampling procedure and the reasons for determining that the sample is representative of the waste.
 - ii. The results of all tests conducted.
 - iii. The accuracy and the precision of any tests conducted."

These records are requested, under both Part 111, as stated above and Section 12.1 and 12.2 of the FACD.

- B. WRITTEN WASTE CHARACTERIZATION – During the November 2, 2015, inspection, DCP provided copies of the waste characterization documents provided to the landfill for the disposal of the concrete, dated September 14, 2015. However, the paperwork does not provide all of the supporting documentation, including all of the sample results for the waste, and a written explanation as to how this characterization was done. DCP must provide documentation along with an explanation as to how the sampling was adequate and representative of the waste, in accordance with Part 111, Rule 307(1), which states in part:

"Part 111, Rule 307(1) A generator shall keep records of any test results, waste analyses, or other determinations made pursuant to R 299.9302 for not less than three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal."

These documents are also requested under Section 12.1 and 12.2 of the FACD.

- C. DRAW DOWN WASTEWATER – The DEQ OWMRP received documents in the February 2016 Progress Report, which indicated that DCP conducted a draw down or pumping, generating 100's of gallons of wastewater from Monitoring Well #604-14, located at 721 Michigan Avenue, at the Howell Chiropractic Clinic, on November 2, 2015 and November 5, 2015. Under Section 12.1 and 12.2 of the FACD, along with Part 111, Rule 307(1) and (2), the OWMRP requests DCP provide all relevant information, including, but not limited to the following:

- a. How the wastewater was placed in a container(s), and what type of container(s) was/were used?
- b. How was the container labeled?
- c. Which vehicles were used for transport and how were the wastes transported?
 - i. The date of the shipment(s).
 - ii. Written documentation maintained on-site to document the proper transportation and disposal.
 - iii. Records of the volumes of the waste.

- d. The characterization of the waste under Part 111, Rule 307(1) and (2).
 - e. How the waste was disposed.
- D. SWPPP REPORT – In the February 2016 Quarterly Progress Report, records for the SWPPP documentation, DCP indicated that no leaks (“None”) were observed during the entire recent quarter, from the air handling equipment. No leaks or weeps found is unusual, because several leaks per month were reported previously. Please explain why no roof duct leaks or weeps were observed during this last quarter.
- E. PROGRESS REPORTS - The DEQ RRD issued a compliance communication to DCP on November 20, 2015, regarding incomplete submittal of information and data in DCP’s November 1, 2015, Progress Report, pursuant to Section 6.11(a) of the FACD. DCP submitted additional information on January 15, 2016. The DEQ RRD review of this submittal found that it was incomplete. The DEQ RRD will be issuing a second compliance communication, separate from this VN, specifying timeframes for DCP to complete submittal of the missing data and information.

The DEQ RRD also intends to request additional information regarding omitted materials from DCP’s February 1, 2016, Progress Report, pursuant to Section 6.11(a) of the FACD. This request will be in the form of a separate compliance communication issued after the DEQ-RRD completes its review of this document.

DCP shall take immediate action to achieve and maintain compliance with Part 111, Part 55, Part 31, and the terms and conditions of the NPDES Permit, and the FACD. DCP must reply to this letter by April 22, 2016, providing documentation to this office regarding those actions taken or planned to be taken to correct the violations listed above.

Your response may include additional information relevant to the violations observed for evaluation. At a minimum, your response should explain the cause of the violations, the actions taken to correct the violations, steps being taken to prevent reoccurrence of the violations, and the duration of the violations, including whether the violations are ongoing. If the violations are not resolved by the date of your response, your response should include a work plan that describes what equipment will be installed, procedures that will be implemented, processes or process equipment that will be shut down, or other actions that will be taken and by what dates these actions will take place to resolve the violations. The OWMRP will evaluate your response, determine DCP’s compliance status at the above-referenced location, and notify you of this determination.

Compliance with the terms of this VN does not relieve DCP of any liability, past or present, from failure to meet the conditions specified in the NPDES Permit and the FACD, or failure to comply with Part 31, Part 55, or Part 111, of the NREPA.

This VN does not preclude, nor limit, the DEQ’s ability to initiate any other enforcement action under state or federal law, as deemed appropriate.

We anticipate and appreciate your cooperation in resolving this matter. If you have any questions, please feel free to contact the program staff who conducted the inspections, and reviews, or me directly at the telephone number below, or by e-mail at BEANL@michigan.gov.

Sincerely,

Lawrence Bean

Mr. Lawrence Bean
District Supervisor & District Coordinator
Lansing District Office
Office of Waste Management and
Radiological Protection
517-416-4375

Enclosure

cc: Mr. Todd C. Fracassi, Pepper Hamilton, LLP (fracassit@pepperlaw.com)
Mr. Jim Colmer, BB&E (jcolmer@bbande.com)
Mr. Richard Kuhl, Department of the Attorney General
Mr. John Craig, DEQ OWMRP